

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department -Khammam District- Revision Petition filed by Sri Nelluri Nagabhushanam S/o Ramaiah R/o Manugur Mandal, Erstwhile Khammam District against the orders in CMA No.14/03, dt:28.08.2004 of Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, Bhadravati Kothagudem – Revision Petition Dismissed - Orders – Issued

TRIBAL WELFARE (LTR)DEPARTMENT

G.O.Ms.No. 6

Dated: 30-05-2020

Read the following:-

- 1) Revision Petition filed by Sri Nelluri Nagabhushanam S/o. Ramaiah, R/o. Manuguru, Erstwhile Khammam District, Dt:03.12.2004.
- 2) Govt.Memo.No.11898/LTR-2/2004-1,Dt:25-05-2005.
- 3) From the Additional Agent to Government, Bhadrachalam, Khammam Dist., Lr.Rc.No.11898/LTR-2/04-1 (CMA.No.14/2003) Dt:12-06-2009.
- 4) Govt.Letter.No.11898/LTR-2/2004 Dt:15.06.2017, 29.08.2017, 27.02.2018,26.04.2018, 22.06.2018, 03.08.2018 & 26.11.2019

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ORDER

In the reference 1st read above, Sri Nelluri Nagabhushanam, S/o. Ramaiah R/o. Manuguru Mandal, Erstwhile Khammam District has filed Revision Petition before the Government aggrieved by the orders of the Additional Agent to Government, Bhadrachalam in CMA No. 14/03, dt.28.08.2004 in respect of land in Sy.No.360 admeasuring Acs.3.13 gts at Manuguru, a scheduled village in Manuguru Mandal, Erstwhile Khammam District.

2) In the reference 2nd read above, Government have rejected Stay on the orders of the Additional Agent to Government, Bhadrachalam as there were no valid reasons and sent a copy of the Revision Petition of the Petitioner to the Project Officer & Additional Agent to Government, Bhadrachalam and he was requested to furnish Para Wise Remarks and connected case records and in the reference 3rd read above the Addl. Agent to Government, Bhadrachalam has furnished Para Wise Remarks and connected case records.

3) Government after conducting hearings and after careful examination of the Revision Petition and as verified from the documents produced before the authority as well as before the Additional Agent to Government observed that;

- Case called on today i.e. 7.12.2019 – Petitioner, Respondent called absent. Counsel for petitioner also absent. Perused the case record.
- The case No.48/2000/MGR was initiated in the lower court i.e. Special Deputy Collector (TW), Bhadrachalam on the report of Special Deputy Tahsildar (TW) Bhadrachalam on 29.2.2000 that the transaction was held between Non-Tribals viz., Mangali Appaiah (petitioner) & Nelluri Nagabhushanam(Respondent) for the land in Sy.No.360 admeasuring Acs.3.15 gts at Manugoor, a scheduled village in Manugoor Mandal in the erstwhile Khammam District. The Special Deputy Collector(Tribal Welfare), Bhadrachalam conducted hearings on 21.3.2000, 31.3.2000, 24.4.2000 and passed following orders on the final hearing on 11.11.2002.

"Respondent attended court on two occasions and filed Xerox copy of sada sale deed dt.23.6.1968, Xerox copies of LR receipts for the years 1972, 1975, 1976, 1977, 1981, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, Xerox copy of pass book issued in 1979 and Xerox copy of ROR PB issued in 1995 but did not file pahani copies in support of his claim over the suit land. Verified records of Manuguru(village).

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- 1) Pahani for 1372F (1962), 1383F (1973) shows Kondru Ramaiah, a tribal as pattedar and cultivator.
- 2) Pahani for 1407F (1997) shows petitioner M.Appaiah as pattedar and cultivator.
- 3) Pahani for 1410F(2000) shows M.Appaiah as pattedar while N.Nagabhushanam as cultivator.

- It is clear that Mangali Appaiah and non-tribal respondent Nelluri Nagabhushanam have come into possession after the LTR Regulation 1/70 came into force w.e.f. 3.2.1970.
- Accordingly, directed the Mandal Revenue Officer, Manugoor to take over possession of the land for making assignment to the eligible tribals as per rules in force."
- Aggrieved by the above orders of the Special Deputy Collector (Tribal Welfare), Bhadrachalam, the non-tribal Appellant viz., Sri Nelluri Nagabhushanam S/o Ramaiah R/o Manugur had filed an Appeal before the Appellate Authority i.e. Agent to Government, Khammam which was later transferred to the Court of Additional Agent to Government & Project Officer ITDA Bhadrachalam. The Appellate Authority i.e. Additional Agent to Government had dismissed the Appeal in CMA No.14/03 on 28.8.2004 holding that - "Pahani for 1372 Fasli to 1383 Fasli one Kondru Ramaiah, a Tribal is Pattedar and cultivator, but in 1407 Fasli, petitioner name is shown as pattedar and cultivator, pahani for 1410 F shows M.Appaiah as pattedar and Nagabhushanam as a cultivator. The sada sale deed dt.22.06.1968 produced as a claim is a Photostat copy and not a registered document. The sale of immovable property should be compulsorily registered, else treated as void and created prior to Regulation to grab tribal property. Thus, holding that the property belonging to Tribals was transferred to Non-tribals in contravention of sub-section 1 of Section 3 of APSA LTR 1/59 as amended by 1/70 and directed the MRO Manuguru to take over possession of schedule property measuring Acs.3.13 gts. situated in Sy.No.360 at Manuguru, a scheduled village. Again aggrieved by the above orders of the Appellate Authority i.e. Additional Agent to Government & Project Officer ITDA Bhadrachalam in CMA No.14/2003, dt.28.8.2004, the Revision Petitioner herein viz., Sri Nelluri Nagabhushanam S/o Ramaiah, aged about: 56 years, occ: Agriculture, R/o Manuguru, Khammam District (erstwhile) filed the present Revision Petition before the Government on 3.12.2004 urging the following grounds:
 - a) An extent of Ac.7.33 gts in Sy.No.360 in Manuguru Revenue village was owned by one non-tribal viz., Kondru Ramaiah and he died leaving behind two sons viz., K.Nagaiah and K.Laiah. They owned the said extent of Ac.7.33 gts. K.Laiah died leaving behind his son K.Ramaiah. K.Nagaiah became illatom son-in-law and he also died leaving behind his two sons viz., M.Sammaiah and M.Appaiah. The said property stood transferred to the name of K.Nagaiah. In the said land K.Ramaiah had Ac.4.20 gts while Ac.3.13 gts fell to the share of K.Nagaiah and inherited by Appaiah and Sammaiah. M.Appaiah and Sammaiah who are the owners of Ac.3.13 cents in Sy.No.360/AA sold away the same to K.Achamma W/o Seshaiah under unregistered sale deed dt.18.12.1967 for a consideration of Rs.410/. From the date of purchase, K.Achamma held possession and enjoyment of the said Ac.3.13 gts in Sy.No.360/AA of Manuguru village.
 - b) On 22.6.1968, the said Achamma gave the said land to her daughter N.Venkamma W/o Ramaiah towards "Pasupu Kumkuma". From the date of such gift, Smt.N.Venkamma continued in possession and enjoyment of the property till she died on 8.11.1997. N.Venkamma is the mother of petitioner herein.

(Cotd..3)

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From the date of her death, petitioner is in possession and enjoyment of the said land. Name of petitioner's mother is also entered in the Pahanies for the year 1969-70 as actual cultivator of said land. Petitioner's mother and subsequent to her death, his grandmother paid land revenue to Government. Petitioner filed unregistered sale deed dt.18.12.1967 i.e. sale deed of pasupukumkuma and land revenue receipts as far as available before the 1st respondent (i.e. Additional Agent to Government).

c) After detailed enquiry and verification of record, MRO Manuguru issued PPB and Title Deeds in petitioner's favour for the said land in the year 1975.

d) On a report of Special Deputy Collector (Tribal Welfare) Bhadrachalam on 29.2.2000, the 2nd respondent registered case No.48/2000 and served notice pointing out that as to why the petitioner should not be ejected from the land

described in the schedule under his possession. Petitioner has submitted copies of unregistered sale deed dt.22.6.1968 and relevant documents. 2nd Respondent, after hearing ordered petitioner's ejection from land i.e. Ac.3.13 gts in Sy.No.360/AA of Manuguru village by order dt.11.11.2002.

e) Aggrieved by the order, the petitioner filed appeal before the Agent to Government. It was later transferred to the 1st respondent and renumbered as CMA No.14/2003. The 1st respondent after hearing the petitioner passed the impugned order dt.28.8.2004 which was received by the petitioner on 20th Nov.2004 confirming order passed by the 2nd respondent.

f) Both the lower courts failed to see that K.Ramaiah is a non-tribal and also failed to see that M.Appaiah is a share holder and not a third party purchaser. The respondents ought to have seen that the property was sold away by non-tribal i.e. M.Appaiah to K.Achamma on 18.12.1967 long prior to coming into force of Regulation I of 1959 as amended by Regulation I of 1970.

g) Both the courts below erred in holding that the sale deed being not registered void and created prior to Regulation to grab the schedule property.

h) Courts below ought to have seen that certified copies of Pahanies 1969-70 shows name of petitioner's mother N.Venkamma as actual cultivator and all revenue receipts, PPBs clearly show her possession since prior to 1969.

i) Courts below erred in holding that non-tribal have come into possession of the schedule property in violation of provisions of 1/59 as amended by Regulation 1 of 1970.

j) MRO held detailed enquiry in 1995 and issued PPBs and Title Deeds to petitioner in respect of the said land. The courts below ought to have seen that if K.Ramaiah is a tribal the question of issue of PPBs and Title Deeds to the petitioner would not have taken place. Courts below ought to have seen that the respondents without verification of record as to how M.Appaiah came to hold the land.

k) 1st respondent has no jurisdiction to decide the matter and the transfer of the appeal filed by the petitioner by the Agent to the Government at Khammam to the 1st respondent is illegal. Therefore, the petitioner prefers this Revision Petition.

l) Respondents ought to have seen that K.Ramaiah is not a tribal. The list of the tribes does not contain "KONDRU" as a Schedule Tribe.

m) Respondents erred in holding that the sale deed is created in view of the copies of Pahanies for the year 1969-70.

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n) Respondents ought to have seen that the Land Revenue receipts from the year 1972 to 1999, Ryotwari Pass Book and ROR in favour of the petitioner and title deeds amply support contention of the petitioner that it was sold away in the year 1967.

o) Respondents ought to have seen that there is no violation of any regulation by the petitioner and therefore the orders of the respondents are without jurisdiction.

p) Respondent No.2 is incompetent to declare the transfers ejected prior to the coming into force of the land transfer regulation as amended regulation 1/70.

q) Respondents ought to have seen that the possession of the petitioner and his purchasers is continuous from 1967 and there is no application by the tribal in this aspect. As such suo-moto proceedings are bad in law.

r) 2nd Respondent (SDC TW Bhadrachalam) could not have initiated such suo moto proceedings after the lapse of 33 years and the proceedings have no sanctity as they were not initiated within the reasonable time.

- Therefore, the Revision Petitioner prayed the Revision Authority to call for records from 1st Respondent (Addl. Agent to Govt.) in CMA No.14/03 and quash impugned order dt.28.8.2004 and also order dt.11.11.2002 of Respondent 2 and pending disposal of Revision Petition, the orders of 1st Respondent dt.28.8.2004 in CMA No.14/03 may be suspended.
- The Government while admitting the Revision Petition, rejected the stay as prayed for and requested the Dist. Collector, Khammam to furnish para-wise remarks vide Govt. Memo.dt.25.5.2005.
- In pursuance of the instructions of the Dist. Collector, Khammam in Lr.Rc.No.F2/CMA/14/2003, dt.12.10.2008, the Additional Agent to Government & Project Officer ITDA Bhadrachalam has submitted the following para-wise remarks to the Government through his letter in CMA No.14/2003, dt.12.6.2009.

i. Petitioner's case is that the land belongs to M.Appaiah (NT) which has been purchased by another non-tribal Koppula Achamma who is grand-mother of Revision Petitioner on 18.12.1967 i.e. prior to LTR. Alleged sale is not true and valid.

In the Lower court, Revision Petitioner stated (in Appeal Grounds) that the appellant mother purchased schedule property on 22.6.1968 and appellant has filed Xerox copy of alleged sale deed dt.18.1.1967. As seen in the application dt.28.2.2004 of Nelluri Nagabhushanam filed in CMA 14/2003 before the AAG that his grandmother Koppula Achamma has purchased suit land from Mangali Appaiah on 18.12.1967 and it was gifted as Pasupukumkuma to her daughter Nelluri Venkamma who is mother of Nelluri Nagabhushanam on 22.6.1968 – since then land is in continuous possession of revision petitioner and his family. But alleged Photostat copy of sale is inadmissible in evidence. Therefore, Lower Court rightly held the alleged sale transaction is unregistered and void.

ii. Possession of Revision Petitioner's mother should be proved with valid title. In remarks column of 1969-70 pahani, it was not written as sale remarks not shown how she came into possession of suit land. Therefore, Petitioner's plea cannot be accepted. Even in 2000-01 one Mangali Appaiah shown as pattedar and Nelluri Nagabhushanam as enjoyer. If the alleged sale is true, the Revision Petitioner's name or his family members name would have been recorded in pattedar column as well as enjoyer's column. These pahanies clearly prove that the Revision Petitioner is not a pattedar and enjoying the property of others.

iii. MRO regularized the sale agreement duly collecting the stamp duty and registration fee under ROR Act. The ROR is a procedural Law. It is not a substantial Law. At the time of issuing of pass books, the issuing authority must verify whether any transaction is hit by LTR or not as the schedule property is situated in scheduled area. The LTR protects interests of the tribals. Therefore, the ROR pass books will not confer any rights over the schedule land.

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iv. The contention of the petitioner that the 1st respondent i.e. Additional Agent to Government & Project Officer ITDA Bhadrachalam has no jurisdiction to decide the matter and the transfer of appeal filed by the petitioner before the Agent to Government, Khammam to the 1st respondent is illegal, is not valid as the Hon'ble High Court of AP in WP No.1996/2005 dt.15.3.2005 Karnati Papamma V/s Agent to Govt. Khammam and (4) others held that "Agent to Govt. Khammam has got power to transfer the cases to the Addl. Agent to Govt Bhadrachalam". As per the above decisions of the Hon'ble High Court, the Agent to Government Khammam is empowered to transfer the cases and the Additional Agent to Government Bhadrachalam can entertain to decide the cases.

Further, the Hon'ble High Court in batch of the WPs 1241/05, 3814, 11731, 11732, 11733, 14138, 23892, 4660 and 26029 of 2005; 462, 13775, 13800, 18900, 23097, 26412, 26417, 21632 of 2006 and 1427, 1959, 2232, 2268, 1620, 2688, 3951, 4258, 4334, 4494, 4854, 3642, 6004 and 6316 of 2007 filed questioning the validity of GO Ms.No.193 passed a common order dt.29.8.2007. Dismissed the above batch of the Writ Petitions held that "the GO Ms.No.193, dt.17.4.2002 does not suffer from any vice or invalidity of not being assented to by the President of India under paragraph 5(4) of 5th Schedule to the Constitution of India.

Therefore, the contention of the Petitioner is not correct and the Agent to Government Khammam is empowered to transfer the cases to the Additional Agent to Government and thus the Additional Agent to Government has also got powers to decide the cases.

v. As seen from the order of the 2nd respondent (Special Deputy Collector) passed in LTR case No.48/2000/MGR dt.11.11.2002 stated that the pahani for the F-1372 and 1383 shows Kondu Ramaiah a tribal is a pattedar and cultivator. The Tahsildar Manuguru in his letter Rc.No.B/1749/2009, dt.9.6.2009 reported that Kondu Ramaiah S/o Lalaiah (late) belongs to Telaga caste, who involved in the transaction in LTR case 48/2000 of Special Deputy Collector (TW) Bhadrachalam. According to the Tahsildar report Kondu Ramaiah is a Non-tribal. The 2nd Respondent has passed ejection orders with a plea that the transaction took place between the two Non-tribals which is prohibited as per LTR 1/59 as amended by 1/70.

vi. The Land Receipts from the year 1972 to 1999 all are clearly after regulation and will not help to prove the case in any way.

The case was previously called-on on the following dates:

- 1. 15.7.2017.. All absent
- 2. 16.9.2017.. Adjourned
- 3. 17.3.2018.. All absent
- 4. 5.5.2018 .. All absent
- 5. 7.7.2018 .. Adjourned
- 6. 18.8.2018.. Counsel for petitioner present and agreed to file Written Arguments.
Posted to 29.9.2018.
- 7. 7.12.2019.. All absent

- The Petitioner and Respondent were absent on all the dates. Counsel for petitioner attended the Court only on 18.8.2018 and promised to file Written Arguments but failed to do so. The case is pending since 15 years.

4) Government after careful examination of the matter, in the absence of any valid and substantiating documentary evidence, do not find any valid reason to hold the case any longer and dismiss the Revision Petition filed by the petitioner viz., Sri Nelluri Nagabhushanam S/o Ramaiah R/o Manuguru, Khammam District and upheld the orders passed by the Appellate Authority i.e. Additional Agent to Govt. & Project Officer, ITDA, Bhadrachalam in CMA No.14/2003, dt.28.8.2004.

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5) The Additional Agent to Government and Project Officer, ITDA, Bhadrachalam, Bhadradri Kothagudem District shall take necessary further action accordingly. The original case records received in the reference 3rd read above are returned herewith.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr. CHRISTINA Z.CHONGTHU
SECERETARY TO GOVERNMENT

To

- 1)Sri Nelluri Nagabhushanam S/o Ramaiah R/o Manugur Mandal,
Erstwhile Khammam District now Bhadradri Kothagudem District.
- 2)Sri Mangali Appaiah, S/o: Nagaiah, R/o: Annaram Village, Manuguru Mandal,
Erstwhile Khammam District now Bhadradri Kothagudem District.
- 3)The Project Officer, ITDA and Additional Agent to Government,
Bhadrachalam, Bhadradri Kothagudem District(w.e.)

Copy to :

The Special Deputy Collector(TW), Bhadrachalam,
Now Bhadradri Kothagudem District for information and necessary action.

The Tahsildar, Manugur Mandal, Now Bhadradri Kothagudem District
for necessary action.

M/s.Venugopala Rao Pasnooru & V.Appa Rao
Advocates(Council of Petitinoer)
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Cell.9347512268, 9848573089

P.S to M(TW)/P.S. to Prl. Secretary(TW)
SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER